HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

(DIVISION BENCH)

CORAM : **Hon'ble Shri S.R. Nayak, CJ**
Hon'ble Shri D.R. Deshmukh, J.

Misc. Appeal No. 712 OF 2005

Appellant (Non-applicant No. 2)		United India Insurance Company Limited, Through : Its Divisional Manager, Divisional Office Main Road Korba, Tahsil and District Korba (C .G.)
		Versus
RESPONDENTS		
(Applicant No. 1)	1.	Kumud Singh W/o Sanjay Singh, aged about 30 years
(Applicant No. 2)	2.	Anurag Singh S/o Sanjay Singh, aged about 7 years.
(Non-applicant No.1)	3.	Bhawani Singh S/o Sanjay Singh aged about 5 years, Non-applicant No. 2 and 3 are Minors through, their natural guardian Mother Kumud Singh, W/o Sanjay Singh, R/o Varanasi (UP)
(Non-applicant No.3)	4.	Vidyasagar Singh, aged about 60 years, R/o Village Taray, post Masodar, Distt. Kamour (Bihar)
(Non-applicant No. 4)	5.	Neeraj Patel S/o Balakram Patel, aged about 30 years, R/o Kharsiya, Distt. Raigarh (C.G.)
(Non-applicant No.5)	6	Vijay Jamnik S/o L.A. Jamnik, aged about 36 years, Occupation Service, R/o D.C. Road Ambikapur, Distt. Surguja (C.G.)

Present:
Mr. Dashrath Gupta, learned counsel for the appellant.

ORAL ORDER
(Passed on 2nd of January 2006)

The following Order of the Court was passed by

S.R. Nayak, CJ:

In this appeal preferred by the Insurance Company, it is contended that the driver of the other vehicle involved in the accident i.e. truck, had contributed negligence in causing accident and

therefore, entire liability to pay compensation could not have been fastened on the appellant - insurance company. This contention requires to be noticed is only to be rejected. In the first instance, such a plea is not taken in the written statement/ statement of objections filed by the insurance company before the MACT. Further, the insurance company - appellant has not adduced any evidence to prove that fact. It is needless to state that the question whether the driver of the truck contributed negligence in causing accident is hundred percent a question of fact. Admittedly, the appellant - insurance company did not seek permission of the MACT under Section 170(b) of the Motor Vehicles Act, 1988 to contest the claim of the claimants on merit. Looking from that angle also, the contention now urged by the appellant - insurance company touching merits of the matter could not be countenanced. The appeal is devoid of merit and it is accordingly dismissed. There shall be no order as to costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb
Deshmukh
Judge